complained of, whether it is an act of service or an attempted performance of a nondelegable duty of the master." This is in accord with the theory adopted by the majority of the courts and in line with the modern tendency. *McLaine* v. *Co.*, 71 N. H. 294, 52 Atl. 545; *Moody* v. *Hamilton Mfg. Co.*, 159 Mass. 70, 34 N. E. 185; *O'Brien* v. *American Dredging Co.*, 53 N. J. L. 291; *Salem Stone & Lime Co.* v. *Chastain*, 9 Ind. App. 453; *Vitto* v. *Keogan*, 15 App. Div. 329; *Geoghegan* v. *Atlas Steamship Co.*, 6 Misc. Rep. 127; *Weeks* v. *Scharer*, 111 Fed. 330, 335; *Peters* v. *George* (1907), C. C. A. 3rd C, 154 Fed. Rep. 634; *Westinghouse* v. *Callaghan* (1907), C. C. A. 8th C., 155 Fed. Rep. 397. An examination of these cases, especially the late ones, will show that the trend of modern decision is toward the theory that places the determination of the relation of servant and vice-principal upon the character of the duty owed by the master to the servant. If it is one of the nondelegable duties he is charged with the negligence of the person to whom he has delegated its performance. See 6 MICH. LAW REV. 181, 264.

MUNICIPAL CORPORATIONS — MANDAMUS — TITLE TO OFFICE.— Eugene Schmitz, while mayor of San Francisco, was convicted of a felony by which the office became vacant, and the board of supervisors elected Charles Boxton in his place. Both claimed the office and discharged its duties. The secretary appointed by Boxton brought mandamus to compel the city auditor to approve his claim for salary. Service was made upon Schmitz and his secretary. *Held,* that the title to the office was only incidentally involved, and the urgency of the situation was such that mandamus was the only adequate remedy. *McKannay* v. *Horton, Auditor* (1907), — Cal. —, 91 Pac. Rep. 598.

That mandamus is not the proper action in which to try the title to an office is generally conceded, but the courts differ in their application of and limitations upon the principle. As a rule, even where there is a clear legal right, it will be denied if questions between persons not parties to the proceedings must be decided. *United States* v. *Gen'l Land Office*, 72 U. S. (5 Wall.) 563; *Keeler* v. *Deo*, 117 Mich. 1. In the principal case service was made upon Schmitz, and the judgment of the court could not operate as an estoppel on either of the claimants to the office of mayor, but the practical effect was to finally decide the title between them. And, although mandamus has always been held proper when brought by a de facto and de jure officer to obtain possession of books or records, it has been denied when the result would be to oust a de facto officer. *Keeler* v. *Deo*, supra; or the question of title was directly and unavoidably in controversy. *State* v. *Williams*, 25 Minn. 340; or the court would have to go behind a certificate of election, *State* v. *Johnson*, 35 Fla. 2. But the lack of title must be clear, and quo warranto is necessary to try the title of a de facto officer. *Lawrence* v. *Hanley*, 84 Mich. 399, 404; *State* v. *Atlantic City*, 52 N. J. L. 332. Nor can an officer try his title by bringing mandamus to compel the payment of his salary, even though the rival claimant be a party to the suit, for the latter has the right to insist that the proper action be used. *People* v. *Board of Police Com'rs of Yonkers*, 174 N. Y. 450; *State* v. *John*, 81 Mo. 13. On the

other hand the writ has been allowed where there was no other claimant or occupant. *State* v. *Daggett,* 28 Wash. 1; *State* v. *Hewitt,* 3 S. Dak. 187; *Metsker* v. *Nealey,* 41 Kan. 122; or there was merely a pretended retention of the office. *People* v. *Kilduff,* 15 Ill. 492. It has also issued to compel the recognition of an officer until the title could be properly determined. *In re Delgado,* 140 U. S. 586; *Keough* v. *Aldermen,* 156 Mass. 403. Where other remedies involved delay or were inadequate the writ has been held proper to try the title to office in several states. *Morton* v. *Broderick,* 118 Cal. 474; *Harwood* v. *Marshall,* 9 Md. 81; *State* v. *Jaynes,* 19 Neb. 161. Virginia and Wisconsin appear to have been even more liberal. *Sinclair* v. *Young,* 100 Va. 284; *State* v. *Oates,* 86 Wis. 634.

[Recent press dispatches report that, on appeal, ex-Mayor Schmitz has been held not guilty. The state may now carry the case to the supreme court of California, which held in the principal case that his appeal, then pending, did not affect its decision.]

NAVIGABLE WATERS—RIGHT OF ACCESS BY RIPARIAN OWNER.—Appellant is the riparian owner along the west bank of the Mobile River, and had constructed wharves and piers in front of its land bordering on the river and within the city of Mobile. The appellee city was about to fence off the shore and deprive appellant of any access to the river and of the use of its improvements. Appellant filed a bill to enjoin such interference. *Held,* the state holds the shores and beds of navigable streams in trust for the public; but riparian owners have a special property right as such, and have the right to dock out, subject to the rights of navigation and the rules of public control. *Mobile Transportation Co.* v. *City of Mobile et al.* (1907), — Ala. —, 44 So. Rep. 976.

Under the old common law any structure built over navigable water was removable as a purpresture, i. e., an invasion of the sovereign's private property in the bed of a navigable stream. *Shively* v. *Bowlby,* 152 U. S. 1; GOULD, WATERS, § 167. This doctrine, however, has been departed from in most of the states. In *People* v. *Mould,* 37 N. Y. App. Div. 35, it is said that the state holds the title to lands under water in trust for the public, and that the public derives benefit from the erection of wharves. The best reason for abandoning the English rule is given as the basis for the decision in *Trustees, etc., of Brookhaven* v. *Smith,* 188 N. Y. 74. It is there argued that the right to wharf out is a necessary part of a right of access to navigable water, and that the old purpresture doctrine would so hinder commerce that it has become inapplicable to American conditions. The decision in the principal case is supported by similar reasoning. In some jurisdictions, however, the purpresture doctrine is still recognized. *Revell* v. *People,* 117 Ill. 468.

PARTY WALLS—CONTRIBUTION BETWEEN ADJOINING OWNERS TO COST OF ERECTION.—Two buildings on adjoining lots were divided by a party wall. Subsequently plaintiff's vendors, the owners of one lot and building, extended the division wall at their own expense and under no agreement with the